

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 523 of 1998

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BUREAU OF INDIAN STANDARD

Versus

WESTERN INDIA ENGINEERING COMPANY (PG)

Appearance:

MR BM GUPTA for Appellant

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 03/11/98

ORAL JUDGEMENT

1. Heard the learned counsel for the appellant.

2. This is an appeal under section 37 of the Arbitration & Conciliation Act, 1996 (the Act for short), challenging the order passed by the City Civil Court appointing a Sole Arbitrator to enter into arbitration for the resolution of the dispute, as nominated by respondent original-plaintiff.

3. The Supreme Court has laid down the principles to be kept in mind by a court dealing with appeal from orders under Order 43, Rule 1, and in this context, in the case of Wander Limited, reported at 1990 (Supp) SCC page 727, and particularly in paragraphs 9 and 14 of the said decision, had occasion to observe that an appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the evidence independently, if the assessment of evidence and the conclusions thereon arrived at by the trial court are reasonable. The above principle laid down by the Supreme Court has also been followed by the Supreme Court in the subsequent case of N.R. Dongrey and others, reported at 1996(5) SCC 714.

3.1 I have no doubt that the said principle also applies to appeals under section 37 of the said Act.

4. On the facts of the case I find that the trial court has appreciated the evidentiary material on record on a prima facie basis in a reasonable manner, and that the findings of fact recorded and the conclusions drawn therefrom are just and reasonable.

5. However, a few salient points sought to be raised require to be noted. Learned counsel for the appellant first sought to contend that the original applicant had failed to produce the Arbitration Agreement as contemplated by sub-section (2) of section 8 of the said Act. It was his contention that the application referred to in sub-section (1) of section 8 could not have been entertained by the Court unless it was "accompanied by the original Arbitration Agreement or a duly certified copy thereof". In this context, learned counsel for the appellant has failed to take note of sub-sections (2) and (5) of section 7 of the said Act. Sub-section (2) specifically contemplates that an arbitration clause forming part of the contract between the parties is also to be construed as an arbitration agreement. Sub-section (5) contemplates that even if, within a contract, there is a reference to another document containing an arbitration clause, the same would also constitute an arbitration agreement if the contract is in writing, and the reference is such as to make that arbitration clause part of the contract. On the facts of the instant case, there is no dispute that clause 18 of the contract between the parties is an arbitration clause, and that the original applicant has in fact produced a copy of the contract. In fact, the copy produced by the applicant is the original so far as the applicant is concerned. This

contention, therefore, has no merit.

5.1 Furthermore, the phrase "arbitration agreement" is defined in section 2(1)(b), and invokes the interpretation of section 7, dealt with by me above.

6. Learned counsel for the appellant then sought to contend that the application filed by the applicant under sections 8 and 9 of the said Act is incompetent by virtue of the fact that it was filed beyond the period of limitation, as contemplated by section 43 of the said Act. A plain perusal of section 43 of the said Act indicates, vide sub-section (2), that for the purposes of this section and the Limitation Act, 1963, an arbitration shall be deemed to have commenced on the date referred to in section 21. In this context, section 21 merely contemplates that the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent, unless otherwise agreed by the parties. On the facts of the case it is found that Clause 18 of the Contract, which constitutes the arbitration agreement, does not contemplate any period of limitation whatsoever, for the purpose of initiating the procedure for appointment of joint arbitrators. In this context note may also be taken of sub-section (3) of section 43, which encompasses the concept that even where an arbitration agreement contemplates or constitutes an outer time limit, "unless some step to commence arbitral proceedings is taken within a time fixed by the agreement", the Court has the power to extend the time for such period as it thinks proper, on such terms as the justice of the case may require. It is, therefore, clear that the statute does contemplate a period of limitation for initiating the arbitration proceedings, but such limitation is not a specific period laid down by section 43 itself, but is dependant upon the period determined by the parties themselves, if any. As aforesaid, on the facts of the case, Clause 18 of the contract does not contemplate any such period. This contention, therefore, does not survive.

8. It was also sought to be urged by the learned counsel for the appellant that the City Civil Court at Ahmedabad had no jurisdiction to entertain the application, and that the said Court was incompetent to make any appointment of an arbitrator, which could only have been done by the Chief Justice of the High Court. For the purpose of supporting this contention a reference was made to the definition of "Court" contained in Section 2, sub-section (1), Clause (e). A plain reading

of this definition indicates that the court having jurisdiction would mean "the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its original civil jurisdiction". To my mind, the meaning is plain and clear. The City Civil Court at Ahmedabad is without dispute the civil court of original jurisdiction so far as the district of Ahmedabad (City) is concerned. The fact that under the very same definition the High Court in exercise of its original civil jurisdiction may also have concurrent jurisdiction, would not deprive the City Civil Court at Ahmedabad of the jurisdiction conferred by section 2(1)(e) of the said Act.

8.1 It was in the context of the aforesaid contention that learned counsel for the appellant also sought to rely upon section 11, sub-sections (5) and (10) of the said Act.

8.2 In the context of sub-section (5) he sought to contend that the appointment of an arbitrator upon a request of a party, where the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party, could only be made by the Chief Justice or any person or institution designated by him. In the context of sub-section (10) of section 11, learned counsel for the appellant also sought to urge that subsequent action for appointment of an arbitrator could only be taken by the Chief Justice, in accordance with the Scheme which may have been framed by the Chief Justice for the said purpose. This submission also has no merit for the simple reason that sub-section (5) as also sub-section (10) of section 11 are consequential to sub-sections (2) and (3) of the said section 11. Obviously sub-section (2) specifically permits the parties to come to an agreement on the procedure for appointing the arbitrator or arbitrators. On the facts of the case such an agreement already exists and is found in clause 18 of the Contract in question. It is only if there is no agreement between the parties as contemplated by sub-section (2), then and only then, sub-section (3) and the subsequent sub-sections are brought into play. However, once it is found that the parties have by an agreement and by contract, specifically agreed to the procedure for appointing their arbitrators, sub-section (5) and/or sub-section (10) would have no application whatsoever.

9. Another contention sought to be raised by the learned counsel for the appellant was based upon a decision of the Supreme Court in the case of Jagdish

Chandra Vs. Kajaria Traders (Ind.) Ltd., reported in AIR 1964 SC page 1882. In the context of this decision it was sought to be contended that under section 69, sub-section (3) of the Partnership Act, the bar to a suit or proceeding by an unregistered partnership applies also to proceedings under section 8, sub-section (2) of the Arbitration Act (1940). In my view there cannot be any controversy as to the principle laid down by the Supreme court. However, what is material is that the principle has no application to the facts of the case. The contract in question, as also the arbitration clause forming part of the contract, was entered into by the then partnership firm. However, when the application came to be filed before the trial court, the said partnership firm had been dissolved and was at the relevant point of time a proprietary concern. Obviously the applicant as the proprietor of the said proprietary concern was a successor-in-interest to the partnership firm. Therefore the bar sought to be raised against the filing of a proceeding by an unregistered partnership firm cannot legitimately be applied to a proprietary concern.

10. No other contentions were raised.

11. In the premises aforesaid, there is no substance in the present appeal and the same is accordingly dismissed.
